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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 CannaVest Corporation, a Nevada
11 corporation,

12 Plaintiff,

13 v.

14 Kannaway, LLC, a Nevada limited
15 liability company; General Hemp,
16 LLC, a Delaware limited liability
company, HDDC Holdings, LLC, a
Nevada limited liability company and
DOES 1-20,

17 Defendant.
18

CASE NO. 14-cv-02160-CAB-BLM

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION FOR
PRELIMINARY INJUNCTION
[DOC. NO. 13]**

Dept: 4C
Judge: Hon. Cathy A. Bencivengo

19 **I. INTRODUCTION**

20 Plaintiff CannaVest Corporation, a Nevada corporation ("Plaintiff" or
21 "CannaVest"), manufactures and sells a hemp-based line of personal care products
22 (shampoo, conditioner, body wash, body lotion, hand cream and salve) under the
23 brand name CANNABIS BEAUTY®. On December 24, 2014, Plaintiff filed a
24 Motion for Preliminary Injunction in this case [Doc. No. 13] against defendant
25 Kannaway, LLC, a Nevada limited liability company ("Kannaway"), seeking an
26 order enjoining Kannaway, its employees, agents, officers, directors, attorneys,
27 representatives, successors, affiliates, subsidiaries, and assigns, and all those in
28 concert or participation with any of them, from:

1 1. Imitating, copying, using, reproducing, registering, attempting to
2 register and/or displaying the mark and designation CANNABIS
3 BEAUTY®, or any mark or designation which colorably imitates or is
4 confusingly similar to that mark and designations, including, without
5 limitation, CANNABIS BEAUTY® alone or in combination with any other
6 term(s), word(s), name(s), logo(s), symbol(s), device(s), designation(s)
7 and/or design(s) in any manner whatsoever;

8 2. Using any other false description or representation or any other things
9 calculated or likely to cause confusion, deception, or mistake in the
10 marketplace with regard to Plaintiff's CANNABIS BEAUTY® mark.

11 3. Directing Kannaway to file with the Court and serve on counsel for
12 Plaintiff, within thirty (30) days after entry of any injunction issued by the
13 Court in this case, a sworn statement as provided in 15 U.S.C. §1116 setting
14 forth in detail the manner and form which Kannaway has complied with the
15 injunction; and

16 4. Directing Kannaway to account for any and all revenues and profits
17 derived by Kannaway from the sale of goods bearing the mark CANNABIS
18 BEAUTY®.

19 Plaintiff also filed a Request for Judicial Notice ("RFJN") in support of its motion.
20 [Doc. No. 13-30.]

21 On January 29, 2015, defendants Kannaway, General Hemp, LLC, a
22 Delaware limited liability company ("General Hemp"), and HDDC Holdings, LLC,
23 a Nevada limited liability company ("HDDC") (collectively, "Defendants"), filed a
24 Memorandum of Points and Authorities in Opposition to Plaintiff's Motion for
25 Preliminary Injunction. [Doc. No. 16.] Defendants did not submit evidence in
26 opposition to Plaintiff's motion for preliminary injunction and instead relied upon
27 the arguments of its attorney. Defendants did not respond to Plaintiff's Request for
28 Judicial Notice.

On February 5, 2015, Plaintiff filed a reply to Defendants' opposition. [Doc. No. 19.] On February 12, 2015, the Court heard oral argument on the motion. Phillip C. Samouris of Higgs Fletcher & Mack, LLP appeared on behalf of Plaintiff. Frederick W. Gaston of Gaston & Gaston appeared on behalf of Defendants. At the hearing, the court GRANTED Plaintiff's motion and asked the parties to submit further briefing and evidence concerning the amount of the preliminary injunction bond. On February 17, 2015, Defendants filed material with the court as to the amount of the bond. [Doc. No. 24.] On February 24, 2015, Plaintiff filed a response to Defendants' material. [Doc. No. 30.]

For the reasons stated at the hearing and as set forth below, Plaintiff's Motion for Preliminary Injunction is **GRANTED**. The preliminary injunction will become effective upon the posting of a bond in the amount of one million two-hundred thousand dollars (\$1,200,000.00). This is the court's Findings of Fact and Conclusions of Law pursuant to Rule 52(a) of the Federal Rules of Civil Procedure.

II. FINDINGS OF FACT

This Court makes the following findings of fact:

1. CannaVest manufactures and sells a hemp-based line of personal care products (shampoo, conditioner, body wash, body lotion, hand cream and salve) under the trademark CANNABIS BEAUTY in relation with its product line "CibaDerm." In February, 2014, Cannavest filed its application for trademark registration for CANNIBIS BEAUTY. On September 30, 2014, Plaintiff's mark was registered by the United States Patent and Trademark Office ("USPTO") (Reg. No. 4615445) and placed on the Supplemental Register (the "CANNABIS BEAUTY®" mark.) See Exhibit F, Doc. No. 13-7.¹ CannaVest has continuously sold this line of products and promoted it in advertising throughout the United States since September 2013.

¹ Plaintiff's RFJN, Doc. No. 13-30 at ¶ 2 is GRANTED.

2. In January or February of 2014, Defendants asked Plaintiff for a license of the CANNABIS BEAUTY® mark. The parties obtained a draft license agreement for this mark in March of 2014 which to date the parties have not signed.

3. During the negotiation of the license agreement, CannaVest discovered that defendant HDDC had filed trademark applications in the United States Patent and Trademark Office (the “USPTO”) for CANNABIS BEAUTY DEFINED (Serial No. 86148703) and CANNABIS BEAUTY DEFINED & design (Serial No. 86149363). See Exhibit M, Doc. No. 13-14.² CannaVest complained to Defendants regarding these trademark applications. In response, HDDC assigned any and all rights it had in those trademark applications to CannaVest on March 12, 2014 (the “Assigned Marks”). The written assignment of those marks to Plaintiff was promptly filed with the USPTO. [See Exhibit N, Doc. No. 13-15.] Plaintiff is the owner of record of the Assigned Marks, which the USPTO has placed on the Principal Register.

4. Defendants have no right to use the mark CANNABIS BEAUTY DEFINED.

5. Despite the foregoing, Kannaway is selling personal care products bearing the name CANNABIS BEAUTY DEFINED in competition with Plaintiff.

6. Plaintiff has repeatedly demanded that Kannaway stop using the CANNABIS BEAUTY DEFINED mark but Kannaway has refused to stop.

7. Customers and other individuals in the hemp-based product industry mistakenly believe that Kannaway is affiliated with Plaintiff and that Kannaway’s CANNABIS BEAUTY DEFINED products are produced or sponsored by Plaintiff.

III. LEGAL STANDARD

A party seeking a preliminary injunction "must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of

² Plaintiff’s RFJN, Doc. No. 13-30 at ¶ 3 is GRANTED.

1 preliminary relief, that the balance of equities tips in his favor, and that an
 2 injunction is in the public interest." *Winter v. Natural Resources Defense Council,*
 3 *Inc.*, 555 U.S. 7, 20, 129 S. Ct. 365 (2008). As discussed below, Plaintiff has
 4 satisfied each of these elements here.

5 IV. DISCUSSION

6 A. Plaintiff Is Likely to Succeed On The Merits Of Its Trademark 7 Infringement Claim

8 A trademark is "any word, name, symbol, or device, or any combination
 9 thereof . . . used by a person . . . to identify and distinguish his or her goods." 15
 10 U.S.C. § 1127. "To prevail on a claim of trademark infringement under the
 11 Lanham Act, 15 U.S.C. § 1114, a party 'must prove: (1) that it has a protectable
 12 ownership interest in the mark; and (2) that the defendant's use of the mark is likely
 13 to cause consumer confusion.'" *Network Automation, Inc. v. Adv. Sys. Concepts,*
 14 *Inc.*, 638 F.3d 1137, 1144 (9th Cir. 2011).

15 Here, Defendants assigned any rights they had in the CANNABIS BEAUTY
 16 DEFINED mark to Plaintiff. Defendants have no right to use that mark.
 17 Defendants have not submitted any evidence showing that they have permission to
 18 use that mark. Moreover, Defendants have not produced a witness to authenticate
 19 the Purported License Agreement which is thus given no weight here. In light of
 20 the foregoing, the uncontested record shows that Plaintiff is the owner of the
 21 CANNABIS BEAUTY DEFINED mark and that Defendants have no right to use
 22 it. The motion for preliminary injunction is granted for that reason.

23 B. Plaintiff Will Likely Suffer Irreparable Harm

24 "Evidence of loss of control over business reputation and damage to goodwill
 25 could constitute irreparable harm." *Herb Reed Enters., LLC v. Fla. Entm't Mgmt.*,
 26 736 F.3d 1239, 1250 (9th Cir. 2013). Here, the record shows that Customers and
 27 other individuals in the hemp-based product industry mistakenly believe that
 28 Kannaway is affiliated with Plaintiff and that Kannaway's CANNABIS BEAUTY

1 DEFINED beauty products are produced or sponsored by CannaVest. As a result,
2 Plaintiff is likely to suffer irreparable harm in the absence of preliminary relief.

3 **C. The Balance Of Equities Clearly Favors Plaintiff**

4 Plaintiff has established a likelihood of success on the merits and irreparable
5 harm. The record shows that Defendants assigned any rights they had in the
6 CANNABIS BEAUTY DEFINED mark to Plaintiff.

7 **D. The Grant Of An Injunction Is In The Public Interest**

8 For the reasons set forth above, in particular to avoid further consumer
9 confusion, the grant of a preliminary injunction here is in the public interest.

10 **V. BOND**

11 Under Rule 65(c), “[t]he court may issue a preliminary injunction or a
12 temporary restraining order only if the movant gives security in an amount that the
13 court considers proper to pay the costs and damages sustained by any party found to
14 have been wrongfully enjoined or restrained.” The Ninth Circuit has “recognized
15 Rule 65(c) invests the district court ‘with discretion as to the amount of security
16 required, if any.’” *Jorgensen v. Cassidy*, 320 F.3d 906, 919 (9th Cir. 2003)
17 (quoting *Barahona-Gomez v. Reno*, 167 F.3d 1228, 1237 (9th Cir.1999)). “The
18 district court may [therefore] dispense with the filing of a bond when it concludes
19 there is no realistic likelihood of harm to the defendant from enjoining his or her
20 conduct.” *Id.* Here, the Court finds a bond of \$1,200,000.00 is appropriate.

21 **VI. INJUNCTION**

22 In light of the foregoing, the Court hereby enjoins Defendants, and each of
23 them, and their employees, agents, officers, directors, attorneys, representatives,
24 successors, affiliates, subsidiaries, and assigns, and all those in concert or
25 participation with any of them, from:

26 1. Imitating, copying, using, reproducing, registering, attempting to
27 register and/or displaying the mark and designation CANNABIS BEAUTY
28 DEFINED, or any mark or designation which colorably imitates or is confusingly

1 similar to this mark and designations, including, without limitation, CANNABIS
2 BEAUTY DEFINED alone or in combination with any other term(s), word(s),
3 name(s), logo(s), symbol(s), device(s), designation(s) and/or design(s) in any
4 manner whatsoever;

5 2. Using any other false description or representation or any other things
6 calculated or likely to cause confusion, deception, or mistake in the marketplace
7 with regard to Plaintiff's CANNABIS BEAUTY DEFINED mark.


8 3. Directing Defendants to file with the Court and serve on counsel for
9 Plaintiff, within thirty (30) days after entry of any injunction issued by the Court in
10 this case, a sworn statement as provided in 15 U.S.C. §1116 setting forth in detail
11 the manner and form which Defendants has complied with the injunction; and

12 4. Directing Defendants to account for any and all revenues and profits
13 derived by Defendants from the sale of goods bearing the mark CANNABIS
14 BEAUTY DEFINED, from the date of the assignment to CannaVest.

15 This injunction will take effect upon the posting of a bond by Plaintiff in the
16 amount of \$ 1,200,000.00, and thereafter will remain in force until final judgment is
17 entered in this case or until otherwise ordered by the Court.

18 **IT IS SO ORDERED.**

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20 DATED: February 27, 2015

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23 Hon. Cathy Ann Bencivengo
24 United States District Judge
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